Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1172

RICHARD G. HARVEY, JR.,

Petitioner,

vs.

SYLVESTER HARRIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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February 29, 1980

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Respondent states that "petitioner's issues do not set forth any special and important reasons why this Court should grant a writ of certiorari. (Brief in Opp., p. 3). Not true. Unless reversed, this case stands for the proposition that a jury may consider purely judicial acts of a sitting judge

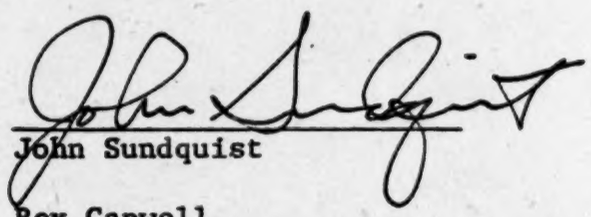
to determine his state of mind or motive for each and every subsequent action taken by the judge with respect to a dissatisfied litigant. This circumvents judicial immunity by permitting the jury to view purely judicial acts of a judge from the bench in determining his liability for subsequent acts.

In order to fairly and freely administer justice, a judge must be allowed to determine the issues before him unfettered by the fear of later suits by litigants based in any part upon the judge's legal decision.

Nowhere does respondent directly address the focal issue of judicial immunity in his response to the petition. Rather, respondent dwells upon his view of the facts, quoting a number of statements allegedly showing that the petitioner was racially motivated. (Brief in Opp., p. 2). Even if true these statements were remote in time to the actions complained of, were not publicly disseminated and were testified to by white officers who petitioner had accused of wrongdoing.

Respondent refers to the decision of the Court of Appeals for "a complete exposition of the record." (Brief in Opp., p. 2). That decision makes no attempt to discuss the facts adduced at trial but simply recites the allegations of the complaint. The complaint, typically, does not recite facts but only the pleader's florid allegations. Although this is not the appropriate occasion to discuss the facts, many of the allegations of the complaint, adopted by the Court of Appeals, are devoid of support in the record. This unusual approach by the Court of Appeals is characteristic of its superficial analysis of the important legal issues involved and the unprecedented and harsh results attained.

Respectfully submitted,



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